*** T H E H O N ' B L E S R I J**

+ W.P.No. 16825 of 2007

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G o l i S u r a R e d d y a n d

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$ The Joint Collector,
West Godavari District and others

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R e s p o n d e n t s

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! C o u n s e l Sri Janardhan Rao for Petitioner
Sri K.Chidambaram

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? C A S E S R E F E R R E D :-

1. 2006(3) ALT 735

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.16825 of 2007

Dated:09.10.2007

Between:

Goli Sura Reddy

.. Petitioner

And

The Revenue Divisional Officer, Ongole, Prakasam District and another.

.. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.16825 of 2007

ORDER:

Goli Sura Reddy and others filed the present writ petition praying for a writ of Mandamus declaring the impugned order of the first respondent in ROC.No.Appeal/07, dated 24.07.2007, as illegal, arbitrary and contrary to law, and consequently, to set aside the same and to pass such other suitable orders.

2. Counter affidavit is filed by respondents 1 to 3. W.V.M.P.No.2019 of 2007 is filed by respondent No.4. Since the pleadings are complete, with the consent of the counsel on record, the writ petition itself is being disposed of finally.

3. Sri Janardhan Rao representing Sri K.Chidambaram, learned counsel representing the petitioners, had taken this Court through the respective stands taken by the parties and would maintain that the impugned order is not in accordance with Regulation 17 (c) of the A.P.State Public Distribution System Control Order, 2001 (hereinafter in short referred to as "Control Order" for the purpose of convenience).

4. The learned counsel also would maintain that these petitioners

have locus standi to maintain the writ petition. The learned counsel also placed strong reliance on **C.Venkataiah v. District Collector, Ananthapur and others**[1].

5. The learned Asst. Government Pleader for Civil Supplies had taken this Court through the contents of the counter affidavit and would maintain that in the facts and circumstances of the case, the impugned order is in accordance with Clause 17 of the Control Order referred to supra.

6. The learned Asst. Government Pleader also would maintain that even if it is to be taken that the petitioners can maintain this writ petition, the writ petitioners are having an effective alternative remedy by way of Revision and without filing a Revision before the competent authority, the writ petitioners invoked the jurisdiction of this Court. At any rate, the learned Asst. Government Pleader for Civil Supplies would contend that even on merits when discretion was exercised by the competent authority, normally, this Court to be slow in disturbing such discretionary orders made by such competent authority.

7. Smt. Surekha representing Sri Damodar Reddy, learned counsel representing the fourth respondent, had taken this Court through the contents of the counter affidavit of the fourth respondent and would maintain that in the facts and circumstances of the case, this is not a fit case to be interfered with under Article 226 of the Constitution of India.

8. Heard the counsel on record. Perused the records.

9. In the affidavit filed in support of the writ petition, the petitioners stated that they along with certain others, who are holding ration cards

in the 4th respondent's fair price shop No.44 of Yerrampudi village, submitted a memorandum in the Praja Patham Programme on 14.04.2007 stating that the dealer-respondent No.4 herein is not distributing the essential commodities properly and misappropriating the stocks, and therefore, requested the authorities to enquire into the allegations and to regulate the distribution properly. It is also stated that basing on such complaint, the Special Deputy Tahsildar (C.S.) enquired into the allegations made by the petitioners in the complaint, dated 14.04.2007, and found that the fourth respondent had committed the following irregularities namely:

i) The dealer is indulging in clandestine business by diverting the balance stock of commodities to the black market by making false entries in the records.

ii) There is a variation of 215 litres of PDS Kerosene and Qtls.6.48 Kgs. of PDS rice as per verification of the records for the month of March, 2007.

iii) The dealer has not distributed the Kerosene to the Pink Card holders and diverted the stock to the black market for pecuniary gains.

iv) The dealer has failed to obey the instructions of the higher authorities and so violated the conditions of the authorization issued to her according to A.P.P.D.S. Control Order, 2001.

v) The dealer has failed to maintain the records properly.

vi) The dealer has failed to behave with the cardholders in good manner.

vii) The dealer has failed to maintain F.P. shop properly by causing inconvenience to the card holders by not

issuing the commodities to the card holder in time when they came to the F.P. shop and delivering the commodities after attending her milk procuring business.

10. It is also stated by the petitioners that in pursuance of the report submitted by the third respondent on 09.05.2007, the 2nd respondent issued a show cause notice in Roc.No.739/2007-C, dated 17.05.2007, calling for explanation and also passed an order suspending the authorization of the fourth respondent pending disposal of disciplinary action and also made alternative arrangements to avoid inconvenience to the card holders. It is also stated that the fourth respondent preferred an appeal to the 1st respondent questioning the orders of the 2nd respondent suspending her authorization pending enquiry. It is also stated that the 1st respondent, after assessing the merits and demerits, came to a conclusion that the Government has been supplying essential commodities to the cardholders by incurring huge subsidies, but, the dealer without making distribution to the cardholders has misappropriated the stocks for pecuniary gains and the same is resulted in a huge loss to the cardholders as well as to the Government exchequer, and ultimately, passed the order stating that "while forfeiting entire security deposit to the Government, the authorization of the dealer-4th respondent herein is hereby ordered to be restored, by taking a lenient view as a first occasion. It is further stated that pending appeal before the 1st respondent, even though the 4th respondent sought for stay, it was not granted, and as a result, essential commodities are being distributed as per alternative arrangements made by respondent No.2 herein. It is further stated that the order of the 1st respondent is not based upon any rational behind and reasoning within the purview of law and Article 14 of the

Constitution of India. There is no nexus between the action contemplated on the irregularities and the action taken and the same is not permissible under any law. It is also stated that if the impugned order is allowed to stand, every person who misappropriates the public money can take shelter on the basis that it is a first occasion. It is also stated that after several requests, the petitioners had to file a petition in the programme held as Praja Patham, and therefore, the 1st respondent, without recourse to law, granting pardon or amnesty would give indications to the society that they can go Scot free, which is not permissible in any way. It is also stated that since the petitioners are not direct parties to the appeal and it is only on their complaints, the action was initiated, the alternative remedy of filing a revision is no bar nor applicable as there is no dispute inter se. It is also stated that it is only to bring to the notice of the Hon'ble Court as to how the public exchequer was misused by the 4th respondent causing misconvenience to the cardholders in the village and how the impugned order is valid within the four corners of law invoking the jurisdiction under Article 226 of the Constitution of India. Further, it is stated that till date, the alternative arrangements made are continuing and the cardholders are very happy with the alternative arrangement. The petitioners further submit that the enquiry has not been completed as directed by the 2nd respondent, and if the 4th respondent is allowed to distribute the Essential Commodities pending enquiry in pursuance of the impugned order, there will not be any fair enquiry and the 4th respondent may transfer the records.

11. The relevant portion of the impugned order reads as hereunder:

"As can be seen from the lower court record, it is evident that

the Appellant-dealer has failed to furnish the coupons for a quantity of 215 litres and Qtls.6.48 kgs in the ground stocks of PDS Kerosene and PDS Rice respectively and also failed to show any backlog to that extent. Thus, it is very clear that the same was misappropriated by the Appellant-dealer, by making fictitious entries in the sales registers and the dealer shall have to pay the loss sustained by the Government towards subsidy in the above stocks found deficit with the Appellant-dealer. The contention of the Appellant-dealer that she had submitted proper coupons to the CSDT, Chinthalapudi, during the last week of April, 2007, when she was busily engaged in performing the marriage of her daughter, is not convincing and satisfactory. Unless there is an acknowledgement to the effect that she handed over all the coupons to the CSDT, Chinthalapudi, the contention of the Appellant-dealer could not be taken as valid one.

The Government have been supplying the Essential Commodities to the cardholders by incurring huge subsidy and the F.P.shop dealers have onerous responsibility for proper distribution of Essential Commodities to the cardholders. But, the Appellant in the case has misappropriated the stocks for pecuniary gains, without distributing the same to the cardholders to whom it is intended, which resulted a huge loss to the cardholders as well as the Government Exchequer. In the result, the following order is hereby made:

While forfeiting the entire security deposit to the Govt., the authorization of the Appellant-dealer is hereby ordered to be restored, by taking a lenient view as a first occasion. It is further ordered that the Appellant-dealer shall have to pay the value of the deficit stock of 215 litres of PDS Kerosene and Qtls. 6.48 kgs. of PDS Rice in accordance with the provisions of clause 17(c) of the APS PDS (Control) Order, 2001, for the loss sustained by the Govt.,

The Revenue Divisional Officer, Eluru, is directed to recover the value of the deficit stock of 215 litres of PDS Kerosene and Qtls. 6.48 kgs of PDS Rice in accordance with the provisions of clause 17(c) of the APS PDS (Control) Order, 2001 and restore the authorization of the Appellant-dealer only

after collecting the fresh trade deposit.

A Revision against this order, under clause 21 (i) of the Andhra Pradesh State Public Distribution System (Control) Order, 2001, lies before the Collector, West Godavari, Eluru, within 30 days from the date of receipt of this order."

12. The main grievance ventilated by the writ petitioners is that having recorded certain positive findings relating to the irregularities, the nature of the order that was made by the competent authority- first respondent herein cannot be sustained.

13. In the counter affidavit filed by respondents 1 to 3, which was sworn to by the Tahsildar, Chintalapudi Mandal, West Godavari District-respondent No.3, the substantial allegations were denied. It is averred that in view of the policy of the Government of Andhra Pradesh, in order to distribute Essential commodities at a subsidized rate to the below poverty line families through F.P.Shops on House Hold Supply Cards, Fair price shop dealers were appointed through the Revenue Divisional Officer's in the District, and in the said process, the respondent No.4 herein was also appointed as authorized F.P.Shop dealer in Errampalli village of Chintalapudi Mandal, and she is conducting the F.P.Shop business operations in Errampalli (V). It is also stated that the Government of Andhra Pradesh with an intention to solve the grievances of the villagers at the village level, proposed to conduct Praja Padam Programme at the respective villages. It is further averred that as per the instructions of the Collector, West Godavari District, the Mandal administration has taken up the programme of Praja Padham in Chintalapudi Mandal, and as per the schedule, it was proposed to conduct Praja Padham Programme in Errampalli (v) on 14.04.2007, and in this Praja Padham Programme, some of the cardholders represented to the Hon'ble Member of

Legislative Assembly, Chintalapudi that the F.P.Shop dealers in Errampalli (v) are not issuing Kerosene to the pink card holders and they requested to take immediate action. It is further averred that on the complaint petition received in the Praja Padham Programme by the Tahsildar, Chintalapudi (R3), it was got enquired by the Deputy Tahsildar (CS) Chintalapudi. The Deputy Tahsildar (CS) Chintalapudi inspected both the F.P.shops (i.e.No.44 and 45) in Errampalli (v) of Chintalapudi Mandal, and during the inspection found that the F.P.Shop dealer No.44 (R4) was not conducting business in accordance with the conditions laid in the authorization and she was also not distributing kerosene to the pink card holders, and the other irregularities noticed by the inspecting authority are:

a) The F.P.Shop dealer of shop No.44 (R4) was indulging in clandestine trade by making false entries in the record and there by diverting the kerosene into black market for her pecuniary gain.

b) On verification of the records with that of sales and coupons, there is variations of 215 litres of kerosene and 6.48 qtls. Of P.D.S. Rice.

c) The dealer has failed to behave in good manner with the card holders.

d) The respondent dealer failed to maintain the records properly.

e) The respondent dealer has failed to maintain the F.P.Shop properly, and when the card holders have come to the shop for drawing their entitlement of Essential Commodities (R4) without delivering the commodity to the card holders she was attending to the milk procuring business and thereby caused much inconvenience to the card holders.

14. It is also stated by the respondents in their counter that a detailed report was submitted by the Tahsildar (R3) to the Revenue Divisional Officer, Eluru (R2), who is the appointing & disciplinary authority of F.P.Shops in Eluru Division in Roc.1/2007 (CSDT), dated 09.05.2007, requesting the appointing authority (R2) for initiation of disciplinary action against the respondent dealer (R4). The Revenue Divisional Officer, Eluru (R2) initiated disciplinary action vide proceeding in Roc.No.739/2007(c), dated 17.05.2007, and suspended the authorization of the F.P. Shop dealer and also issued show cause notice vide Roc.No.739/2007(c), dated 17.05.2007, while making alternative arrangements. It is further stated that aggrieved by the suspension orders, the dealer/respondent No.4 herein preferred an appeal before the Joint Collector, West Godavari, Eluru.

15. It is further averred in paragraph 4 of the counter affidavit filed on behalf of the respondents that the dealer/respondent No.4 herein preferred an appeal and sought stay in operation of the suspension orders issued by the Revenue Divisional Officer, Eluru (R2). The appellate authority-Joint Collector, West Godavari (R1) rejected the stay petition, and in order to see that the Public Distribution System is run smoothly in the Mandal, Essential Commodities allotted to the F.P.Shop No.44 were distributed to the cardholders by making alternative arrangements and the Essential Commodities were distributed smoothly without any cause of complaint by the card holders. It is further stated that as per the provisions of Andhra Pradesh Public Distribution System Control order, 2001, clause 17 of it reads as follows:

> a) If any fair price shop dealer is found to be in possession of supply card(s) or draws commodities by making false entries of card number(s) even though no such card holders resides in the

village/municipality as the case may be, such fair price shop dealer shall be required to pay loss to Government calculated as the differences between the market rate and public distribution system rate of all commodities supposed to have been supplied or drawn on such card(s) or entries, from the date of issue of authorization to the fair price shop dealer concerned or from the date of issue of such household supply card, which ever is later.

b) If any fair price shop dealer makes false entry or entries, in respect of card(s) held by person(s) residing in the village/municipality concerned, by fraudulently showing to have supplied more quantities than the quantity actually supplied or diverts stocks to any person, but does not make any entry in the cards, with a view to making fictitious entries subsequently, or cover up the excess stocks already available with him, such dealer shall be required to pay loss to Government calculated as the difference between the market rate and Public Distribution System rate of the commodity actually delivered or converted by such false entry or entries or worked backwards from the date of issue of authorization to the fair price shop dealer concerned or from the date of issue of such house hold supply card, whichever is later.

c) If any fair price shop dealer diverts stock either wholly or partly, he/she shall be liable to pay as penalty three times the difference between the market rate and Public Distribution System rate of the Commodity thus diverted, besides cancellation of authorization given by the Revenue Divisional Officer/Sub-Collector.

It is stated that the Joint Collector, West Godavari, Eluru (R1) having followed the procedure laid under law has disposed of the appeal petition imposing penalty under clause 17 (c) of the Control Order. It is also stated that as per the said clause, the F.P.Shop dealer (R4) who has committed irregularities is bound to pay penalty 3 times the difference between the market rate and Public Distribution System

rate of the commodity thus diverted or misutilized. It is further stated that in the instant case, the inspecting authority has reported that the dealer of F.P.Shop No. 44 (R4) has misappropriated 6.48 quintals of rice and 215 litres of kerosene for her pecuniary gain. The value of the rice and kerosene stocks reported to be misappropriated, as per the Public Distribution System rate, is Rs.3319.00 and Rs.2043.00 respectively which comes to a total of Rs.5362.00. But, while collecting the misappropriated stock value under section 17(c) of the Control Order, the Joint Collector, West Godavari District, Eluru (R1) imposed penalty under section 17 (c) of the Control Order and directed the dealer-respondent No.4 herein to pay Rs.35,949-00 besides forfeiting the trade deposit of Rs.3,000-00 to the Government account. Thus, the total amount that has to be realized from the dealer is Rs.38,949-00. The Joint Collector, West Godavari considered all the relevant facts and passed the impugned orders. It is also stated that in compliance to the orders of the Joint Collector, West Godavari, Eluru, the F.P.shop dealer (R4) paid Rs.38,949.00 to the Government account towards penalty as well as fresh trade deposit in lieu of the trade deposit forfeited, and after payment of the value to the Government account, the authorization was restored by the appointing authority (R2) vide proceeding in Roc.No.739/2007 (c) dated 9-8-2007. It is also stated that the action of R1 is in accordance with the provisions of the Control order, and the loss sustained by the Government to its exchequer is recovered from the F.P.Shop dealer and remitted to Government account besides forfeiting the trade deposit of the dealer to the Government account. It is also stated that the orders of the Joint Collector, West Godavari is in accordance with law and has no infirmities. The 4th respondent is given sufficient punishment. If the petitioners have any further grievance, they may file

revision petition. The petitioners, instead of filing revision petition before the competent authority, have approached this Hon'ble Court. The specific stand is taken that the action of R3 is in accordance with the provisions of the Control order referred to supra and the writ petition filed by the writ petitioners is not maintainable.

17. R-4 filed a counter affidavit stating in paragraph 3 that she was selected and appointed as a dealer of fair price shop No.44 of Errampalli village in the month of August, 2003 and the second respondent herein has issued authorization on 28.08.2003 vide authorization no.113/2003-2004. It is also stated that the fourth respondent had been distributing the essential commodities to the cardholders regularly and sincerely upto the satisfaction of the authorities and the cardholders without any remark or complaint.

18. It is averred in paragraph 5 of the counter filed by R-4 that she was shocked to receive the order, dated 17.05.2007, along with show-cause notice in Roc.No.739/2007/C passed by the 2nd respondent suspending her authorization, which was passed basing on the report sent by the 3rd respondent in Roc.No.1/2007/CS, dated 09.05.2007, and on reading the said order, the 4th respondent came to know that during the Prajapatham Programme held on 14.04.2007, some of the villagers have complained against her and the dealer of fair shop No.45 stating that they are not distributing the essential commodities properly and not issuing kerosene to the Pink Card holders, and upon that, the M.L.A. Chinthalapudi has instructed to conduct enquiry. It appears that as per the instructions of local M.L.A., the 3rd respondent has conducted an enquiry in respect of shop Nos.44 and 45 through the Deputy Tahsildar, who conducted the enquiry in the last week of

April, 2007 with the consultation of village elders and some of the cardholders. It is further stated that during enquiry by the Deputy Tahsildar, the fourth respondent furnished all the registers and records including the details of vouchers, which were submitted to the CSDT, Chintalapudi in respect of the PDS rice and kerosene, and that all the registers and records were found proper, but to the utter surprise of the 4th respondent, the said Deputy Tahsildar has submitted a false report, at the instance of the rival political group on the village, stating that there was variation of 6.48 quintals of PDS rice and 215 litres of kerosene. It is also stated that after General Elections-2004, the rival political group has been trying for termination of the 4th respondent's authorization of F.P.Shop No.44 with an intention to get appoint their own person as a dealer of the said F.P.shop and made a false complaint against the 4th respondent by obtaining signatures of some of the cardholders without informing anything to them, and out of about 50 cardholders, who signed in the complaint given against the 4th respondent and another dealer of shop No.45, only 5 card holders are from the 4th respondent's shop, whereas, others are the card holders of shop No.45. It is further stated that the said 5 cardholders have also given notarized affidavits stating that during the Prajapatham programme held by the M.L.A., somebody had obtained their signatures on some paper without informing the contents therein and that they have no grievance against the dealer of F.P.shop No.44.

19. It is also stated in the counter filed by the 4th respondent that aggrieved by the order dated 17.05.2007 passed by the 2nd respondent in suspending her authorization, she preferred an Appeal before the 1st respondent submitting the notarized affidavits of the card

holders, who signed on the representation, and also the representation of all other cardholders and villagers requesting the first respondent to revoke the suspension order and also explaining the facts and circumstances. It is also stated that the 1st respondent has passed order dated 24.07.2007 ordering for restoration of the 4th respondent's authorization on a condition of payment of cost of the variation stock of 6.48 quintals of PDS rice and 215 litres of kerosene. It is also stated that as per the said order, the 4th respondent deposited the cost of the said stocks to a sum of R.35,949/- through a challan dated 09.08.2007 and accordingly the respondents have permitted the 4th respondent to lift the stocks by restoring her authorization. It is further stated that the 4th respondent has taken Demand Draft dated 10.08.2007 for Rs.25,000/- in favour of the District Manager, A.P.State Civil Supplies Corporation Limited at Eluru and the 3rd respondent has issued release order dated 11.08.2007 for the stocks, and accordingly, the 4th respondent received half of the quota allotted to her shop and also distributed to the cardholders on 15.08.2007. The 3rd respondent informed the 4th respondent that he received the interim order of this Hon'ble Court on 14.08.2007 in the above writ petition, and as such, the remaining half of the stocks cannot be released. It is also stated that the first petitioner, at the instance of the rival political group in the village, had made a false complaint against the 4th respondent and also influenced the 3rd respondent and that his subordinate staff got sent the report to the second respondent making false allegations and without enquiring the CSDT, Chintalapudi with regard to the coupons submitted by the 4th respondent in respect of the variation stocks of PDS Rice and Kerosene. Even though the 4th respondent was busy

with the marriage arrangements of her daughter scheduled on 11.05.2007, she distributed the essential commodities to the cardholders and maintained the registers properly. The 4th respondent further submitted that, in fact, the petitioners 2 to 5 herein have not signed in her complaint submitted against her and other dealer and the 1st respondent had made all efforts to file the present writ petition for termination of her authorization with ulterior motives due to village politics and obtained the *ex parte* interim order, dated 09.08.2007. Further, a specific stand had been taken that though the 4th respondent did not commit any irregularity or misappropriation of stocks, she obeyed the order of the 1st respondent only to avoid further litigation in the matter and paid the cost of the stocks under alleged variation. It is also stated that even the alleged variation is very simple and permissible variation. It is further stated that the authorization of the 4th respondent had been restored and the 4th respondent has been distributing the essential commodities to the cardholders by receiving the stocks from the department after completion of all the formalities. Subsequently, due to the interim stay granted by this Court, the 4th respondent is unable to distribute the remaining stocks of that month.

20. Strong reliance was placed on clause 17 of the Control order and in particular clause 17(c). Clause 17 of the Control order deals with penalties for possessing cards making false entries or diverting stock. Clause 17(c) of the Control order specifies that notwithstanding anything contained in this Order, if any fair price shop dealer diverts stock either wholly or partly, he/she shall be liable to pay as penalty three times the difference between the market rate and Public Distribution System rate of the commodity thus diverted, besides

cancellation of authorization given by the R.D.O./Sub-Collector.

21. It is needless to say that clause 20 of the Control order deals with Appeal and clause 21 of the Control order deals with Revision. On the aspect whether the cardholders as effected parties or aggrieved parties can maintain the writ petition, strong reliance was placed on **C.Venkataiah's** case (1 supra) wherein, the learned Judge at para 6 observed as follows:

> "Strong objection is raised on behalf of the respondents as to the *locus standi* of the petitioner to file the writ petition. Even while admitting the writ petition, this Court pointed out that the person-in-charge of the temple, being an employee, cannot be expected to raise any objection for the acquisition, and having regard to the nature of interests involved, it cannot be said that the petitioner does not have locus standi. Much water has flown, even since the writ petition was admitted ten years ago. The concept of locus standi has almost become otiose, particularly when the person does not claim any interest or relief for himself. Therefore, the objection raised on behalf of the respondents is overruled."

22. Submissions at length were made that inasmuch as an effective alternative remedy by way of Revision is available, the writ petitioners cannot maintain the present writ petition.

23. It is no doubt true that the writ petitioners are the card holders and it is stated that at their instance, since the irregularities had been pointed out, appropriate action had been initiated. It is also true that on a careful reading of the impugned order, certain positive findings had been recorded relating to the irregularities. But, however, the discretion was exercised after recording certain reasons. It is true that the authorities while recording such positive findings relating to

irregularities may have to be careful and cautious. However, while making the order, certain conditions had been imposed.

24. In the light of the clear stand taken in the counter affidavit, this Court is of the considered opinion that inasmuch as the discretion was exercised by the competent authority, this Court is not inclined to disturb such discretionary order except observing that when the competent authority records positive findings relating to irregularities, the consequences resulting there from may have to be carefully examined before making such discretionary orders.

However, in the light of the clear stand taken in the counter affidavit filed by R1 to R3 sworn to by R3, this Court is not inclined to disturb the said discretionary order, and accordingly, the writ petition shall stand dismissed, subject to the observations specified supra. No order as to costs.

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(P.S.NARAYANA,J)

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Dt. 09.10.2007
v v

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[1] 2006(3) ALT 735